

IN THE UTAH COURT OF APPEALS

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| In the interest of B.R. and<br>J.Y., persons under eighteen<br>years of age. | ) | MEMORANDUM DECISION            |
|  | ) | (Not For Official Publication) |
|  | ) | Case No. 20050183-CA           |
|  | ) |                                |
| C.M.Y.,  | ) | F I L E D                      |
|  | ) | (August 25, 2005)              |
| Appellant,   | ) |                                |
|  | ) | 2005 UT App 362                |
| v.   | ) |                                |
|  | ) |                                |
| L.A. and L.A.,   | ) |                                |
|  | ) |                                |
| Appellees.   | ) |                                |

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Seventh District Juvenile, Castle Dale Department, 148104  
The Honorable Mary Manley

Attorneys: Samuel Bailey and Don Torgerson, Price, for Appellant  
Mark H. Tanner, Castle Dale, for Appellees

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Before Judges Bench, Davis, and Greenwood.

BENCH, Associate Presiding Judge:

Appellant C.Y. appeals a juvenile court judgment terminating her parental rights.

C.Y. first contends that the juvenile court erred in allowing Lori A. to testify where Petitioners did not include her on their witness list. "The court has broad discretion in determining whether to allow a witness to testify and this court will not reverse such ruling unless it abused that discretion, substantially affecting [C.Y.'s] rights." In re A.M.S., 2000 UT App 182, ¶16, 4 P.3d 95. To determine whether the juvenile court abused its discretion in allowing Lori to testify, we consider if the testimony "could have been reasonably anticipated . . . or whether the testimony constituted unfair surprise." Gerbich v. Numed, Inc., 1999 UT 37, ¶16, 977 P.2d 1205.

Larry and Lori A., the guardians of C.Y.'s children, are the Petitioners in this case. Although Lori was not included on Petitioners' witness list, C.Y. subpoenaed Lori to testify at trial. Further, Petitioners disclosed the basic content of

Lori's testimony during discovery. Therefore, the district court did not abuse its discretion in ruling that C.Y. could reasonably have anticipated Lori's testimony and that C.Y. was not unfairly surprised. See id.

C.Y. next contends that the juvenile court erred by allowing the withdrawal of Petitioners' admissions. The court ordered that any answers to discovery requests be served by December 2, 2004, for the trial scheduled for December 15. On December 8, C.Y. filed an Expedited Motion for Summary Judgment based on admissions deemed admitted for failure to timely respond. Petitioners served their answers the following day. At trial, the juvenile court granted Petitioners' motion for withdrawal of certain "deemed-admitted" admissions.

Rule 20A(g) of the Utah Rules of Juvenile Procedure states that "[e]xcept as modified in this paragraph, requests for admission may be used pursuant to Utah R. Civ. P. 36." Utah R. Juv. P. 20A(g). Rule 36 of the Utah Rules of Civil Procedure dictates "what might be called a 'conditional' discretionary standard." Langeland v. Monarch Motors, Inc., 952 P.2d 1058, 1060 (Utah 1998). "In the first step, we review the [juvenile] court's determinations as to whether amendment or withdrawal would serve the presentation of the merits and whether amendment or withdrawal would result in prejudice." Id. at 1060-61. Second, "we review the [juvenile] court's discretion to grant or deny the motion." Id.

C.Y. does not contend that the withdrawal of the deemed admissions did not serve the merits of the case, but rather asserts that the juvenile court erred in failing to consider prejudice. The "'test of whether a party will be prejudiced by the withdrawal of an admission is whether the party is now any less able to obtain the evidence required to prove the matter which was admitted than he would have been at the time the admission was made.'" Id. at 1063 (quoting 10A Lawyers Edition, Federal Procedure § 26:591 (1994)). C.Y., in her brief, did not demonstrate how she was less able to obtain evidence the day of trial than when the admissions were deemed admitted. Therefore, we conclude that the juvenile court did not abuse its discretion in allowing withdrawal of the admissions pursuant to rule 36. Further, because the juvenile court met the discretionary standard of rule 36, it is unnecessary to determine whether the court also met the "good cause" standard under rule 20A(g). See Utah R. Juv. P. 20A(g) ("Upon a showing of good cause, any matter deemed admitted may be withdrawn or amended upon the court's own motion or the motion of any party.").

Finally, C.Y. contends that in addition to the above "larger errors" there are additional deficiencies that prejudiced C.Y. in preparation for trial. "Under the cumulative error doctrine, we

will reverse only if 'the cumulative effect of the several errors undermines our confidence . . . that a fair trial was had.'" State v. Dunn, 850 P.2d 1201, 1229 (Utah 1993) (alteration in original) (quoting Whitehead v. American Motors Sales Corp., 801 P.2d 920, 928 (Utah 1990)). As explained above, the court did not abuse its discretion by allowing Lori to testify and in permitting the withdrawal of the admissions. Where the remaining alleged errors do not rise to a level that would undermine our confidence that C.Y. received a fair trial, the cumulative error doctrine does not apply. See id.

Accordingly, the judgment of the juvenile court is affirmed.

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Russell W. Bench,  
Associate Presiding Judge

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WE CONCUR:

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James Z. Davis, Judge

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Pamela T. Greenwood, Judge